

TENTATIVE RULINGS for CIVIL LAW and MOTION

August 6, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Falconer v. City of West Sacramento et al.**
Case No. CV PO 07-2231

Hearing Date: **August 6, 2009** **Department Fifteen** **9:00 a.m.**

The Court's file does not reflect a filed opposition by plaintiff to defendants' motion for summary judgment or, in the alternative summary adjudication. However, because defendants filed a reply to plaintiff's opposition, the Court assumes plaintiff served her opposition on defendants. Therefore, the Court considered plaintiff's opposition.

The motion for summary judgment or, in the alternative, summary adjudication is **GRANTED**. (Code Civ. Proc., § 437c; *Susag v. City of Lake Forest* (2002) 94 Cal.App.4th 1401; Undisputed Material Fact 1; Plaintiff's Undisputed Material Facts 1-6.)

A defendant moving for summary judgment bears the burden of persuasion that one or more elements of the cause of action in question "cannot be established," or that "there is a complete defense" thereto. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.) The moving party must show that the undisputed facts, when applied to the issues framed by the pleadings, entitle the moving party to judgment. (*Juge v. County of Sacramento* (1993) 12 Cal.App.4th 59, 66.) Defendants met their burden of persuasion by proving that plaintiff had an undisturbed conviction under Penal Code section 148(a)(1). The burden then shifted to plaintiff to provide evidence of excessive force that would not necessarily imply the invalidity of her conviction. Plaintiff failed to provide any evidence that would not necessarily imply the invalidity of her conviction. Accordingly, defendants are entitled to judgment as a matter of law.

Defendants request for judicial notice is **GRANTED**. (Evid. Code, §452, subd. (d).)

Defendants' objections to plaintiff's undisputed material facts numbers 1-6 are **OVERRULED**.

Plaintiff's counsel is **ORDERED** to file plaintiff's opposition papers before the hearing.

Defendants are directed to prepare a formal order consistent with this ruling and in accordance with Code of Civil Procedure section 437c, subdivision (g) and California Rules of Court, rule 3.1312.

TENTATIVE RULING

Case: **Ford Motor Credit Company v. Cummings**
Case No. CV CV 09-426

Hearing Date: **August 6, 2009** **Department Fifteen** **9:00 a.m.**

Defendant Sandra Cummings' motion to set aside default and default judgment is **GRANTED**. (Code Civ. Proc., § 437; State Bar of Cal., Cal. Attorney Guidelines of Civility and Professionalism (adopted July 20, 2007) § 15.) Defendant is to file her answer by August 12, 2009. The Court does not condone plaintiff's counsel's failure to warn opposing counsel before filing a request for entry of default.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.